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 Nominal Defendant JAKKS Pacific, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ADVANCED ADVISORS, G.P., *et al.*

Plaintiffs,

v.

STEPHEN BERMAN, an individual;
 JOEL BENNETT, an individual;
 MICHAEL G. MILLER, an individual;
 MURRAY L. SKALA, an individual;
 ROBERT E. GLICK, an individual;
 MARVIN ELLIN, an individual; DAN
 ALMAGOR, an individual;
 LEIGH ANNE BRODSKY, an individual;
 REX H. POULSEN, an individual; and
 PETER F. REILLY, an individual,

Defendants.

JAKKS PACIFIC, INC.,
 Nominal Defendant.

CASE NO.: 2:14-cv-01420-JAK-
 (SSx)

REPLY TO PLAINTIFFS'
 OPPOSITION TO DEFENDANTS'
 REQUEST FOR JUDICIAL NOTICE
 AND RESPONSE TO PLAINTIFFS'
 REQUEST FOR JUDICIAL NOTICE

Date: Sept. 8, 2014
 Time: 8:30 a.m.
 Courtroom: 750
 Hon. John A. Kronstadt
 Complaint Filed: Feb. 25, 2014
 Trial Date: TBD

Defendants Stephen Berman, Joel Bennett, Michael G. Miller, Murray L. Skala, Robert E. Glick, Marvin Ellin, Dan Almagor, Leigh Anne Brodsky, Rex H. Poulsen and Peter F. Reilly and nominal defendant JAKKS Pacific, Inc. ("JAKKS," collectively with the individual defendants, the "Defendants") respectfully submit this (a) Reply in support of their Request for Judicial Notice ("Request"), ECF No. 32, filed in support of Defendants' Motion to Dismiss Verified Shareholders' Derivative Amended Complaint ("DAC"), or, In the Alternative, to Stay the Action ("Motion"), ECF No. 30, and (b) Response to Plaintiffs' Request for Judicial Notice, ECF No. 43.

PRELIMINARY STATEMENT

Defendants requested that the Court take judicial notice of fourteen documents (Exhibits 1-14) in support of their Motion. See Request at 1-2. Plaintiffs do not object to the notice of Exhibits 1 and 4-14. Plaintiffs' Opposition to Defendants' Request For Judicial Notice ("RJN Opp'n") at 2, ECF No. 44. Plaintiffs challenge only the notice of Exhibits 2 and 3. Id. at 2-3. However, Exhibits 2 and 3 are public filings made by JAKKS with the Securities and Exchange Commission ("SEC") and referenced in the DAC. These Exhibits are cited by Defendants to present a complete and accurate picture of the facts alleged by Plaintiffs making these documents the proper subject of judicial notice.

I. EXHIBITS 2 AND 3 ARE THE PROPER SUBJECT OF JUDICIAL NOTICE

The Court may judicially notice public filings with the SEC. Request at 3 (citing Ronconi v. Larkin, No. C-97-1319-CAL, 1998 WL 230987, at *1 (N.D. Cal. May 1, 1998) ("[T]he court can also take judicial notice of the relevant public disclosure documents filed with the Securities and Exchange Commission"), aff'd, 253 F.3d 423 (9th Cir. 2001); In re Silicon Graphics Inc. Sec. Litig., 183 F.3d 970, 986 (9th Cir. 1999) (holding it proper to consider SEC filings "'whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff's] pleading'") (superceded by statute on other grounds).

1 In addition, Courts may consider documents "'whose contents are alleged in a
2 complaint and whose authenticity no party questions, but which are not physically
3 attached to the [plaintiff's] pleading.'" Request at 4 (citing Silicon Graphics, 183 F.3d at
4 986 (9th Cir. 1999) (citation omitted) (alterations in original)). The Court may consider
5 the entirety of such documents even where only portions of the document are mentioned
6 in the complaint. In re Stac Electronics Sec. Litig., 89 F.3d 1399, 1405 (9th Cir. 1996)
7 ("The district court considered the full text of the Prospectus, including portions which
8 were not mentioned in the complaints. We note that such consideration is appropriate in
9 the context of a motion to dismiss, and does not convert the motion into one for
10 summary judgment.").

11 Plaintiffs concede this point in their RJN Opposition, yet still challenge the notice
12 of Exhibits 2 and 3. See RJN Opp'n at 4. Plaintiffs' opposition ignores the fact the
13 Court is " not . . . required to accept as true allegations that contradict exhibits attached
14 to the Complaint or matters properly subject to judicial notice, or allegations that are
15 merely conclusory, unwarranted deductions of fact, or unreasonable inferences."
16 Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010) (emphasis added).

17 Exhibit 2 is a copy of JAKKS' Oct 5, 2011 Form 8-K filed with the SEC and
18 attaching a press release which included the text of JAKKS' response letter to Oaktree
19 Capital. Plaintiffs cite to this letter in their DAC, paragraph 33, but only quote selective
20 portions of the letter. As Plaintiffs' Opposition states, the "court [is permitted] to look to
21 SEC filings and other documents that are quoted in, or form the basis of, the allegations
22 in the Complaint, for purposes of determining whether those allegations are pled
23 sufficiently." RJN Opp. at 4. This is in accord with Ninth Circuit case law stating that
24 the full text of documents referenced in the complaint may be considered on a motion to
25 dismiss. In re Stac Electronics Sec. Litig., 89 F.3d at 1405. Defendants do just this,
26 citing Exhibit 2 to include aspects of the October 5 press release that were excluded
27 from Plaintiffs' pleading. See Mot. at 2-3. It is proper for the Court to consider the
28 portions of Exhibit 2 excluded from the DAC on a motion to dismiss.

Exhibit 3 is a copy of JAKKS' Form 8-K dated March 5, 2012 filed with the SEC and attaching a Shareholder Rights Agreement ("SRA") also dated March 5, 2012. The SRA is referenced in Plaintiffs' complaint, and Plaintiffs rely on the contents of the SRA as part of its claim. See DAC ¶¶ 5 n.3, 38. Again, the Court may consider portions of the document not explicitly referenced by Plaintiffs in the DAC. In re Stac Electronics Sec. Litig., 89 F.3d at 1405.

Exhibit 3 is also important in that it is needed to correct the erroneous chronology advanced by Plaintiffs in their DAC and again in their Opposition. See Defs.' Reply at 7, n.14, filed August 11, 2014. Plaintiffs purport that the SRA was a reaction to a threat made by the Clinton Group ("Clinton"). Id. However, as demonstrated by Exhibit 3—and which Plaintiffs do not dispute—the SRA was dated March 5, 2012 and does not mention Clinton. Nor would one expect Clinton to be mentioned since Clinton did not actually issue the statement on which Plaintiffs base their allegation until March 14, 2012—nine days after the SRA was announced as demonstrated by Exhibit 4, to which Plaintiffs do not object. Ex. 4 at 1.

Plaintiffs accuse Defendants of improperly "set[ting] forth their version of the facts" RJN Opp'n at 6. However, as described above, Defendants' cite the Exhibits for completeness and to correct the erroneous facts presented by Plaintiffs. The Court is not required to adopt a complaint's factual inaccuracies as true in light of contradictory documents properly before the Court. Daniels-Hall, 629 F.3d at 998. Since Exhibits 2 and 3 are properly before the Court, both as SEC filings and documents incorporated in the DAC, the Court may properly notice the documents for the reasons above and in Defendants initial memorandum in support of their Request.

II. DEFENDANTS DO NOT OBJECT TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

Plaintiffs request that the Court take judicial notice of Exhibits A and B to the Declaration of David N. Lake. Plaintiffs' Request for Judicial Notice at 1. Exhibit A is the same document for which Defendants seek judicial notice as Exhibit 5, and Exhibit

1 B is the same document for which Defendants seek judicial notice at Exhibit 3. See
2 Request at 1. Defendants do not object to the Court taking judicial notice of the
3 contents of these documents, consistent with Plaintiffs' position. RJN Opp'n at 2.

4 **III. CONCLUSION**

5 For the reasons stated herein, the Court should grant the Request.

6
7 DATED: August 11, 2014 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

8 By /s/ Peter B. Morrison
9 Peter B. Morrison
10 Attorney for Defendants
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